United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

76-7453

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United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 76-7453

KAUFMAN LINKER and DYNAMISMM,
Plaintiffs-Appellants,

v.

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., DEAN WITTER & CO., INC., GOLDMAN SACHS & CO., WALTER F. BAUER, WERNER L. FRANK, FRANCIS V. WALKER, and all other executive officers and directors of INFORMATICS, INC., as of February 27, 1974, HENRY J. SMITH, former Chairman and Director, and all other directors of the EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, as of February 27, 1974, THE EQUITABLE LIFE HOLDING CORP., and all others whom discovery may show should be named,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

DEFENDANT'S APPENDIX

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KAHLMAN LINKER and DYNAMISMM,

Plaintiffs, Pro Se,

v.

MERRILL, LYNCH, PIERCE, FENNER & SMITH, INC., DEAN WITTER & CO., INC., and GOLDMAN SACHS & CO.,

-and-

WALTER F. BAUER, WERNER L. FRANK, FRANCIS V. WALKER, and all other executive officers and directors of INFORMATICS, INC., as of February 27, 1974,

-and-

J. HENRY SMITH, former Chairman and Director, and all other directors of the EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, as of February 27, 1974,

-and-

THE EQUITABLE LIFE HOLDING CORPORATION,

-and-

all others whom discovery may show should be named,

Defendants.

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JUDGE WERKER
76 CIV. 3543

COMPLAINT

COLLUSION TO DEFRAUD STOCKHOLDERS IN VIOLATION OF THE SECURITIES LAWS

JURISDICTION

1. This action arises under the Constitution and Laws of the United States.

2. Jurisdiction is conferred upon this Court by the Securities and Exchange Act of 1934 (§10(b) and Rule 10 b-5; §13(d)(1) et seq., and §§ 15, 16, 18 and 27).

SUBJECT MATTER OF THE COMPLAINT

3. At a special meeting of stockholders, held on February 27, 1974, the stockholders of INFORMATICS, INC., a Delaware corporation, purportedly approved a "merger" of Informatics with Equitable Computer Corporation, a Delaware corporation and wholly-owned subsidiary of Equimatics, Inc., itself a more than 90% owned subsidiary of EQUITABLE LIFE HOLDING CORPORATION, a Delaware corporation and itself a wholly-owned subsidiary of THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES (hereinafter "The Equitable,") a New York corporation.

Plaintiffs possess evidence that the purported "merger" may have been a manipulative and deceptive device, without valid business or corporate purpose, contrived for self-dealing objectives by the management of Informatics, Inc., and the Equitable, the acquiring company, to appropriate solely for their joint benefit, and grievously at the expense of the non-management stockholders of Informatics, Inc., the entire stock ownership of Informatics, Inc., at a time and price arbitrarily and capriciously set by management and The Equitable, and by methods which would have been prohibited to the acquiring company had the purported "merger" been subject to the laws governing corporations incorporated in New York State.

Plaintiffs, in protesting at the special meeting of stockholders of Informatics, Inc., the arbitrary and capricious "freeze-

out" of non-management stockholders by the management of Informatics, Inc., and The Equitable, was then aware only of false or misleading disclosure of material facts and the omission of material facts in the Proxy Report for that meeting. Upon later probing, extending over many months, plaintiff became aware:

(a) of management's communications with stockholders of Informatics, Inc., in relationship to the forthcoming "merger," sent to stockholders prior to January 30, 1974, (the date of the Proxy Report for the Special Meeting of Stockholders) may also have been false or misleading with respect to disclosure of material facts;

(b) MERRILL, LYNCH, PIERCE, FENNER & SMITH, INC., DEAN WITTER & CO., INC., and GOLDMAN, SACHS & CO. may have been acting in concert with the managements of Informatics, Inc., and The Equitable in arbitrary, capricious and illegal ways unfairly to treat the non-management stockholders of Informatics, Inc., with respect to such "merger," and

(c) difficult as it may be even to imagine, the Securities and Exchange Commission and its Corporation Finance Division (responsible for full and open disclosure in the Proxy Report) may have been colluding with the above-named three securities firms and the management of Informatics, Inc., and The Equitable to violate the disclosure provisions of the Securities and Exchange Act, as well as their own (SEC) promulgated rules,

to the grievous injury of the non-management stockholders of Informatics, Inc.

Among other provisions violated is Section 10(b) et seq. of the Securities and Exchange Act of 1934, and Rule 10 b-5, to wit:

Section 10 provides:

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality, of interstate commerce, or of the mails, or any facility of any national securities exchange --

* * * *

"(b) to use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."

Rule 10 b-5 provides:

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange

(a) to employ any device, scheme, or artifice to defraud,

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security."

Though plaintiffs, as has been indicated above, have

evidence that the members of the Securities and Exchange Commission and Philip R. Farnsworth, Branch Chief of the S.E.C.'s Corporation Finance Division, may have engaged in conduct which was arbitrary, capricious, an abuse of discretion, and not according to law with respect to the subject matter of this complaint, plaintiffs have determined that they will not name such members of the S.E.C. and staff as defendants in this proceeding.

PARTIES

4. Plaintiff, KAHLMAN LINKER, is a resident of the State of New Jersey (4612 Province Line Road, Princeton, New Jersey 08540), with business offices in New York (67 Broad Street, 32nd Floor, New York, New York 10004). Plaintiff, Linker, as of February 27, 1974 (and of record January 15, 1974) had indirect beneficial interest in 1,000 shares of Informatics, Inc., Common Stock held in the name of his wife, Ruth T. Linker, 600 shares in the name of his daughter, Kate Linker, and 600 shares in the name of his son, Jon S. Linker (such shares having been sold "under protest" to The Equitable).

Application has been made to incorporate plaintiff, DYNAMISMM, as a not-for-profit corporation in the State of New York, formed to serve and protect the interests of individuals (including investors) of small or moderate means, its corresponding address being 67 Broad Street, 32nd Floor, New York, New York 10004, and its founder and spokesman being plaintiff Linker. Dynamismm holds a power of attorney to represent in this proceeding the direct beneficial interest of 6,000 shares held on February 27, 1974 (and of record January 15, 1974) by Irving P. Grace, Rocktown Road, R.D.

Lambertville, New Jersey (such shares having been sold "under protest" to The Equitable.

5. Defendant, MERRILL, LYNCH, PIERCE, FENNER & SMITH, INC., is a New York Stock Exchange member corporation and is registered with the Securities and Exchange Commission (hereinafter referred to as "SEC") as a broker-dealer, its main office being at One Liberty Plaza, New York, New York 10006. Defendant, DEAN WITTER & CO., INC., is a New York Stock Exchange member corporation, is registered with the SEC as a broker-dealer, and its main office is at 45 Montgomery Street, San Francisco, California 94106. Defendant, GOLDMAN, SACHS & CO., which served as advisor to The Equitable in the "merger" is a New York Stock Exchange member firm and is registered with the SEC as a broker-dealer, its main office being at 55 Broad Street, New York, New York 10004. Each of the broker-dealers had the responsibility to make sure that there were no false or misleading statements of material fact made concerning any involvement of its firm in the proxy material sent to stockholders for the merger purportedly approved by the stockholders of Informatics, Inc., on February 27, 1974.

6. Defendant, BAUER, was Chairman of the Board and President of Informatics, Inc., as well as Director of Equimatics, Inc., on February 27, 1974 (when stockholders purportedly approved the merger of Informatics, Inc., with Equimatics, Inc.) and Bauer is now President and chief executive officer of the successor company (Informatics, Inc.), the corporate offices of which are at 21031 Ventura Boulevard, Woodland Hills, California 91364. Defendant, FRANK, was President and Director of Equimatics, Inc., as

well as a Director of Informatics, Inc., from December, 1971 (when Equimatics, Inc., was formed as a company jointly owned by The Equitable Life Assurance Society of the United States and Informatics, inc.) until February 27, 1974 (when stockholders purportedly approved the merger of Informatics, Inc., with Equimatics, Inc.) and FRANK is now Executive Vice President and Director of the successor company (Informatics, Inc.), the corporate offices of which are at 21031 Ventura Boulevard, Woodland Hills, California 91364. Defendant, WAGNER, was Executive Vice President and Director of Informatics, Inc., as well as Director of Equimatics, Inc., on February 27, 1974 (when stockholders purportedly approved the merger of Informatics, Inc., with Equimatics, Inc.), and Wagner is now Senior Vice President and Director of the successor company (Informatics, Inc.), the corporate offices of which are at 21031 Ventura Boulevard, Woodland Hills, California 91364.

7. Defendant, SMITH, was Chairman of the Board of Directors of The Equitable Life Assurance Society of the United States (hereinafter "The Equitable") on February 27, 1974 (when stockholders purportedly approved the merger of Informatics, Inc., with Equimatics, Inc.) and is now retired as Chairman, though continuing as a Director of The Equitable, the home office of which is at 1285 Avenue of the Americas, New York, N.Y. 10019. Smith had been Chairman of the Board of The Equitable at all times from the formation of Equimatics, Inc., as a company jointly owned by The Equitable and Informatics, Inc., until February 27, 1974, when the stockholders of Informatics purportedly approved the merger of Informatics with Equimatics.

As latest reported, the Directors of The Equitable include John T. Fey (Chairman), Ivan Allen, Jr., James A. Attwood, William H. Avery, Roger M. Blough, W. Michael Blumenthal, Andrew F. Brimmer, Charles W. Buek, Francis H. Burr, Coy Eklund, Aiken W. Fisher, James B. Fisk, Manley Fleischmann, Robert F. Goheen, Lincoln Gordon, Maurice Hecksher, George F. James, J. Kenneth Jamieson, R. Stewart Kilborne, Winthrop Knowlton, Herbert E. Longenecker, Morton D. Miller, O. N. Miller, Milton C. Mumford, Oscar M. Ruebhausen, Lewis P. Seiler, Eleanor B. Sheldon, Edward Byron Smith, J. Henry Smith, Hamilton Southworth, James H. Walker, Samuel R. Walker and Clifton R. Wharton, Jr. Each of such directors may have served in a similar capacity as of February 27, 1974, and, thus, had the responsibility to assure that the proxy material submitted to stockholders of Informatics, Inc., of the special meeting of stockholders on that day was not false or misleading with respect to any material fact or omitted disclosure of material facts.

8. Defendant, the Equitable Life Holding Corporation, a Delaware corporation, is a wholly-owned subsidiary of The Equitable Life Assurance Societyof the United States, a New York corporation, with offices at 1285 Avenue of the Americas, New York, N.Y. 10020. The company which purportedly acquired the stock of Informatics, Inc., was the Equitable Computer Corporation, a Delaware corporation, which was a wholly-owned subsidiary of Equimatics, Inc., a Delaware corporation which, in turn, was a majority-owned subsidiary of the Equitable Life Holding Corporation.

GENERAL BACKGROUND
CHRONOLOGICALLY PRESENTED

9. There is evidence to support the belief that intent unfairly to exploit the stockholders of Informatics, Inc., may have been planned for a relatively long period of time. There is evidence to support the belief, as well, that false or misleading disclosure of some of the subject matter herein to be presented may be interpreted in no other way but that the false or misleading character of disclosure may have been willful.

(a) The base for the unfair and illegal treatment of Informatics stockholders was formed in 1969. The Legislature of the State of New York then amended its theretofore stringent insurance laws to enable an insurance company incorporated in New York State to create a wholly-owned holding company, incorporated in a State with less restrictive covenants and regulation, for acquiring, for example, companies engaged in ancillary undertakings -- the holding company acquisitions, thus, tending to be less subject to restrictive covenants and regulation than those by which New York State incorporated insurance companies are governed. Beginning in 1969, therefore, the Insurance Department of New York State held, in effect, only limited oversight authority over the acquisition of subsidiaries by The Equitable Life Holding Corporation (a Delaware corporation)although the provisions of the new law mandated, for example, full disclosure to the appropriate regulatory authorities, "fairness of the exchange of cash for stock or assets to be received," as well as the assurance that acquisition arrangements were not contrary to the interests of either policyholders or

the public of the State of New York. The new legislation, however, in effect may have generally enabled a mutual "public trust" company (such as The Equitable) much more freely to engage in acquisitions of ancillary activity enterprises (as far as the New York State Insurance Department was concerned), using techniques of acquisition hy privately-owned corporations which normally may not be fairly concerned about the rights of non-management stockholders, as long as, for example, The Equitable had complied with the new law's limitations in respect to the nature or percentage of outstanding stock of the company acquired.

Interestingly enough, the Chairman of the Special Committee on Insurance Companies, whose report to the Superintendant of Insurance of the State of New York (dated February 15, 1968) undoubtedly formed the basis for the enactment of the new insurance legislation, was Oscar M. Ruebhausen, currently a director of The Equitable.

(b) Informatics, Inc., was incorporated in Delaware on May 13, 1969, as successor by merger, July 25, 1969, to a California corporation of the same name. If this does not show willful anticipation of the purported "merger" of February 27, 1974, it most assuredly turned out to be a most fortuitous convenience.

10. In December, 1971, Equimatics, Inc. (a Delaware corporation) was formed by The Equitable and Informatics, Inc., as a jointly-owned company to develop "computer based systems in support of many activities which are commonly shared by the insurance, health care and related industries," the proprietary application

software "packages" of which become building blocks of total systems "directed primarily to customers in the life, health, property and casualty business."

(a) Equimatics, Inc., at that time, had thus become a majority-owned subsidiary of The Equitable Life Holding Corporation (a Delaware corporation) which is itself a wholly-owned subsidiary of The Equitable Life Assurance Society of the United States -- Informatics, Inc. having been given 50,000 shares of Class B stock of Equimatics, "a sizable minority position," in exchange for "a perpetual license agreement covering certain Informatics software products." Simultaneously with the formation of Equimatics, Inc., interlocking Boards of Directors with respect to Informatics, Inc., and Equimatics, Inc., were set up -- with Werner L. Frank, who had spent more than five years previously as Senior Vice President of Informatics, Inc., becoming President of Equimatics, Inc.

(b) The 1972 Annual Report of Informatics, Inc., stated of the joint venture in Equimatics, Inc.:

> "This new company is already offering a number of data processing services and products for the insurance industry and has a growing staff of professionals.
>
> "In future years, Informatics will share in Equimatics' profits as a substantial minority shareholder."

(c) The 1973 Annual Report of Informatics, Inc., also stated:

> "Our joint venture in Equimatics. . just completed its first year of operation and, as can be expected in a start-up situation, incurred losses; but its performance is better than expected. Equimatics has grown steadily and we are optimistic about its future. Under the equity method of accounting, our sizable minority position in Equimatics will not be reflected in either our operating statements or the balance sheet until such time as Equimatics accumulates positive retained earnings."

11. (a) The first overt indication that management of Informatics, Inc., may have been "feathering its own nest," in preparation for squeezing out the company's non-management stockholders (whose capital had financed, without receiving income of any kind, the development of the company to that point), and that management may have been applying willfully false or misleading disclosure techniques, appeared in the June 23, 1973, Notice of the Annual Meeting of Stockholders to be held on July 26, 1973. Such Proxy Report stated that management, in addition to recommending the reelection of all directors (with but one change), solicited proxies for the issuance of options on a total of 100,000 shares of the Corporation's common stock at $4.06 per share -- an extraordinarily generous distribution to themselves, if only considered with respect to the fact that the outstanding capitalization of the corporation was then only 1,544,636 shares, and the $4.06 exercise price for the options was very near to the all-time low market price for the stock.

The Proxy Report's justification for granting the options may have itself been capriciously stated (in the light of management's "sell-out" of non-management stockholders at the Special Meeting of Stockholders on February 27, 1974, some six months later).

> "The Board of Directors of the Corporation believes that there may be insufficient financial motivation in the top management group for continued performance in pursuit of the Corporation's objectives and that, therefore, additional incentives are appropriate." (Emphasis applied.)

(b) That same Proxy Report also provides evidence that Merrill, Lynch, Pierce, Fenner & Smith, Inc., may have by this time

become involved in facilitating "the changing or influencing the control" of Informatics, Inc. The Proxy Report stated:

> "The only person owning of record or known to management to own beneficially 10% or more of the corporation's outstanding stock is Merrill, Lynch, Pierce, Fenner & Smith, Incorporated, which on June 7, 1973, owned of record 520,933 shares (34%) of the Corporation's outstanding stock."

The implication of this disclosure will be enlarged upon later.

12. What may have been further evidence of willfully misleading disclosure on the part of management of Informatics, Inc., prior to the purported approval of the "merger" of Informatics, Inc., with Equimatics, Inc. (on February 27, 1974) is found in a letter sent to all stockholders of Informatics, Inc. (under date of October 3, 1973) by Walter F. Bauer, President. Mr. Bauer indicated in the letter that The Equitable and Informatics, Inc., "have agreed in principle to the acquisition of Informatics by The Equitable," and that "the price was fixed at $7.00 per share." Much more importantly, the letter stated:

> "The acquisition is dependent on the development and execution of a definitive merger agreement and the approval of the Insurance Department of the State of New York. The matter will then be referred to you and all other stockholders of Informatics for their vote and approval; under Delaware Law (under which the company is incorporated), over 50% of the outstanding shares must vote for approval. If the merger is accomplished, a cash payment of $7.00 per share will be made to stockholders upon completion of the transaction."

Mr. Bauer's letter to stockholders under date of October 3, 1973, was capricious in that he willfully refrained from then disclosing to the stockholders of Informatics, Inc., that, as was later stated in the Proxy Report for the Special Stockholders' Meeting of February 27, 1974:

> "Upon the effectiveness of the merger (should more than 50% of the outstanding shares vote for approval of the merger), the interests of the stockholders in Informatics will terminate completely and they will no longer be stockholders of Informatics. Furthermore, the stockholders will not become the holders of any securities of any corporation which is involved in the merger. As stated above, they will receive only cash."

Bauer unquestionably breached the fiduciary duty he owed stockholders of the Company by not clearly disclosing in his letter to stockholders of October 3, 1973, that <u>if a simple majority of the outstanding shares voted to approve the "merger," all stockholders would be forced to sell their shares</u> and at $7.00 per share (unless a stockholder was willing to demand a Delaware court-appointed appraiser, and pay the cost of the appraisal); in any case, however, the stockholder would be "frozen out" -- he could no longer retain any stockholder interest in Informatics.

In refraining from disclosing those facts in his letter to stockholders of October 3, 1973, Bauer willfully did not allow stockholders to become aware of the true nature and implications of the "merger" which was to be submitted for the approval of stockholders on February 27, 1974, <u>at an early enough date to be effective in protecting their interests or organizing stockholder opposition</u>.

Further, in refraining from disclosing in his letter of October 3, 1973, that, upon approval of the "merger," both the management of Informatics and Equimatics would themselves obtain stock in the merged company (which, of course, was denied non-management stockholders), Bauer displayed an unconscionable dereliction of responsibility; he gave stockholders no opportunity to

observe, until it was too late to protest effectively, that management's recommendations were not to be trusted, because they were completely self-serving.

13. Under date of January 30, 1974, a Proxy Statement for the Special Stockholders' Meeting (to be held on February 27, 1974) was sent out to stockholders of Informatics, Inc. Some of the more significant details of the purported "merger," for which management of Informatics recommended approval, were presented (as annexed excerpts from the first three of the 87 printed pages of the Proxy Report) on the next succeeding page (15A):

> In paragraph (b), it will be observed that stockholders were then given their initial notice (too late for organizing effective opposition) to the effect that, as far as stockholders were concerned, this was no merger; it was a "freeze-out." If approved by the stockholders (and only later in the Proxy Report, buried in the middle of paragraph (h), was it indicated that adoption of the merger required only the affirmative vote of the holders of a simple majority of the outstanding shares of stock), all stockholders must sell their shares, and at the arbitrarily set price of $7.00 per share, and at the time which had been arbitrarily set by management; and they were thenceforth compelled to give up all actual or potential stockholder interest in Informatics, Inc., or Equimatics, Inc. (in which Informatics had a substantial minority interest).
>
> In Paragraph (c) it was stated, "The book value

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informatics inc

PROXY STATEMENT

This Statement is furnished in connection with the solicitation by the management of Informatics, Inc., a Delaware corporation, with principal offices at 21050 Vanowen Street, Canoga Park (Los Angeles), California 91303 ("Informatics" or the "Company"), of proxies for use at the Special Meeting of Stockholders of the Company to be held on February 27, 1974, at 10:00 A.M., Pacific Daylight Time, in the Angeles Room of the Valley Hilton Hotel, 15433 Ventura Boulevard, Sherman Oaks, Los Angeles, California 91403 and at any adjournment thereof. The approximate date on which this Statement and accompanying form of Proxy will first be sent to Stockholders is January 30, 1974. (a)

SUMMARY OF PROPOSED MERGER

As set forth more fully below, the Stockholders will be asked to approve the merger of Equitable Computer Corporation, a Delaware corporation ("Computer"), which is a wholly-owned subsidiary of Equimatics, Inc., a Delaware corporation ("Equimatics"), into the Company. The result of the merger, if it is approved by the Stockholders, will be that the holders of Informatics Common Stock will receive $7 in cash for each share of such stock. Upon the effectiveness of the merger, the interests of the Stockholders in Informatics will terminate completely, and they will no longer be stockholders of Informatics. Furthermore, the Stockholders will not become the holders of any securities of any corporation which is involved in the merger. As stated above, they will receive only cash. (b)

The book value of a share of Informatics Common Stock as of September 29, 1973, was $3.51. See "INFORMATICS, INC. CONSOLIDATED STATEMENT OF OPERATIONS", page 7. Such book value does not include the proportionate interest per share which Informatics has in certain assets, such as stock of Equimatics. In this connection, see Note (K) of "INFORMATICS, INC., NOTES TO CONSOLIDATED STATEMENT OF OPERATIONS," page 10, and Note (8) of "INFORMATICS, INC., NOTES TO CONSOLIDATED FINANCIAL STATEMENTS," page F-13. (c)

PURPOSES OF THE MEETING

The Special Meeting of Stockholders of Informatics is to be held for the purpose of taking the actions described below in connection with the proposed merger of Computer into the Company in accordance with the Merger Agreement dated January 30, 1974, between the Company and Computer, a copy of which is attached hereto as Exhibit A. Attached to the Merger Agreement as Exhibit I thereto is a copy of the Statutory Agreement of Merger between Informatics and Computer which, following adoption, is to be filed with the Delaware Secretary of State pursuant to Delaware law. Both the Merger Agreement and the Statutory Agreement of Merger are hereinafter collectively referred to as the "Merger Agreement". Equimatics is a subsidiary of The Equitable Life Holding Corporation, a Delaware corporation ("ELHC"), which is itself a wholly-owned subsidiary of The Equitable Life Assurance Society of the United States ("The Equitable"). (d)

(e) Under the Merger Agreement, Computer will be merged into Informatics, the holders of Informatics Common Stock will receive $7 cash for each share of Common Stock of Informatics outstanding on the effective date of the merger, the shares of Computer owned by Equimatics will be converted into Common Stock of Informatics and Informatics will thereupon become a wholly-owned subsidiary of Equimatics. It is further contemplated that, following the merger, Informatics will be merged into Equimatics and the name of Equimatics will be changed to Informatics, Inc.

The management of Informatics does not have any knowledge of any other matters to be presented at the Special Meeting and the management of Informatics does not intend to present business at the meeting other than as set forth herein.

Reasons for the Merger

(f) The management of the Company believes that, in view of the bid and asked prices reported in the last twelve months for its Common Stock, the price of $7 per share for such stock which stockholders will receive if the merger becomes effective appears attractive and provides an opportunity for the stockholders to obtain substantially more than could have been obtained by a stockholder from a sale in the market just prior to the announcement of the proposed merger, as indicated by quotations for the stock before the proposed merger was first announced. See "MARKET PRICES OF INFORMATICS COMMON STOCK," page 13. Accordingly, the Board of Directors is of the view that the matter should be presented to the stockholders for their approval or disapproval.

(g) The Board of Directors of Informatics recommends that the stockholders vote FOR the adoption of the Merger Agreement. The basis for the recommendation is as set forth in "RECOMMENDATION OF MANAGEMENT," page 3. In this regard, see also "PROPOSED MANAGEMENT ARRANGEMENTS UPON MERGER," page 33 and "INTERESTS OF CERTAIN DIRECTORS IN THE PROPOSED MERGER," page 36.

VOTING

(h) The Board of Directors has fixed January 15, 1974, as the record date for the determination of Stockholders entitled to notice of and to vote at the Special Meeting. As of such record date, Informatics had outstanding and entitled to vote 1,682,533 shares of Common Stock, par value $.10 per share ("Informatics Common Stock"). The holder of each share of Informatics Common Stock is entitled to cast one vote in respect of each such share on each of the matters to come before the Special Meeting. The adoption of the Merger Agreement requires the affirmative vote of the holders of a majority of all the outstanding shares of Common Stock, a quorum being present at the meeting. In order to constitute a quorum, there must be represented at the meeting in person or by proxy a majority of all the outstanding shares of stock entitled to vote at the meeting. Members of the Board of Directors and officers of Informatics intend to vote the shares held by them in favor of the adoption of the Merger Agreement. However, in determining whether the required number of shares have been voted in favor of the merger, the 108,705 shares held of record or beneficially by such directors and officers of Informatics, representing approximately 6.4% of the total number of shares outstanding, will not be counted.

(i) To the knowledge of the management of Informatics, on the record date no single stockholder of Informatics owned of record or beneficially more than 10% of Informatics Common Stock, except that Merrill Lynch, Pierce, Fenner & Smith Incorporated owned of record on that date 445,847 shares of Informatics Common Stock, which represents approximately 26.5% of the total number of shares outstanding. Management believes that a substantial number of such shares are beneficially owned by customers of that firm.

THE PROPOSED MERGER

As mentioned above, Informatics and Computer have entered into a Merger Agreement which provides for the merger of Computer into Informatics and the exchange of each outstanding share of Informatics Common Stock for $7 in cash. Upon effectiveness of the merger, Computer will cease to exist as a corporation and Informatics will thereupon become a wholly-owned subsidiary of Equimatics. Equimatics is a corporation formed in 1971 by Informatics and The Equitable in which Informatics presently has a substantial minority stock ownership consisting of 50,000 shares of Class B Stock (see "CAPITALIZATION OF EQUIMATICS," page 11 and "EQUIMATICS," page 28). The Equitable has transferred its interest in Equimatics to its wholly-owned subsidiary, ELHC. It is further contemplated that, following the merger, Informatics will be merged into Equimatics and the name of Equimatics will be changed to Informatics, Inc. (j)

The respective Boards of Directors of Computer and Informatics have approved the Merger Agreement. Computer's sole stockholder (Equimatics) has adopted the Merger Agreement. ELHC has given its undertaking that, among other things, it will cause Computer to perform its obligations under the Merger Agreement and that it will furnish Computer with sufficient funds to cover the aggregate amount payable in exchange for Informatics Common Stock in accordance with the Merger Agreement. (k)

RECOMMENDATION OF MANAGEMENT

Informatics' Board of Directors believes that the cash price negotiated with The Equitable is fair and reasonable and is in the best interest of Informatics' stockholders. The price offered is in excess of the highest bid price of Informatics Common Stock quoted in the over-the-counter market during the preceding twelve months, although during earlier periods Informatics Common Stock had been quoted in such market at per share prices higher than $7 (see "MARKET PRICES OF INFORMATICS COMMON STOCK," page 13). (l)

The terms of the merger are the result of negotiations between representatives of the Company, principally Walter F. Bauer and Thomas L. Taggart, and representatives of The Equitable. Among the factors considered in negotiating the amount to be exchanged for each share of Informatics Common Stock were the existing assets, liabilities and operations of the businesses of Informatics and Equimatics, earnings (or losses) of the businesses, and current and recent market prices of the Common Stock of Informatics. Informatics is a minority stockholder of Equimatics, and Walter F. Bauer, Thomas L. Taggart and Francis V. Wagner are Directors and Werner L. Frank is President and a Director of Equimatics. Informatics has no other affiliation with The Equitable. In that connection, see "SUMMARY OF THE MERGER AGREEMENT, Organization after the Merger," page 5, "PROPOSED MANAGEMENT ARRANGEMENTS UPON MERGER," page 33 and "INTERESTS OF CERTAIN DIRECTORS IN THE PROPOSED MERGER," page 36. Dean Witter & Co. Incorporated has been retained by Informatics as financial advisor in connection with the proposed merger and has advised the Board of Directors of Informatics that in its opinion the price of $7 per share to be paid is fair and reasonable to the Stockholders of Informatics. Informatics has paid a fee of $25,000 to Dean Witter & Co. Incorporated for its services in connection with the rendering of its opinion. (m)

SUMMARY OF THE MERGER AGREEMENT

A summary of certain provisions of the Merger Agreement is set forth below. The summary is not a complete explanation or description of the terms of the Merger Agreement; Stockholders are therefore advised to read the Merger Agreement, attached hereto as Exhibit A, by which the summary is qualified in its entirety.

Exchange Of Shares For Cash

Each share of Informatics Common Stock outstanding on the effective date of the merger will be exchanged for $7 in cash which will be paid to the holder upon surrender of the certificate representing such share. The outstanding Common Stock of Computer, all of which is owned by Equimatics, will be

of a share of Informatics common stock as of September 29, 1973, was $3.51," with references made to later sections of the Report, permitting inferential adjustments -- all of which were difficult to find in the Proxy Report and, when found, tended to be most misleading for evaluation purposes. To have chosen the "Summary" section for disclosing such information, too, was most capricious, that section being the most read and used by most stockholders for decision-making purposes, and normally does not permit adequate or needed explanatory addenda. Resultingly, the statement showing a book value per share of only about one-half the $7.00 purchase price for the stock, undoubtedly encouraged a substantial number of unsophisticated stockholders to vote in favor of the merger, against their true interests -- and it will later be shown that only a margin of some 3.5% of the shareholdings eligible to vote purportedly tipped the balance to force all stockholders to sell their stock at $7.00 per share.

Of itself, there could not be a statement more misleading than that the book value per share of the stock of a software development and marketing company (such as Informatics, Inc.) is a specific dollar and cents figure. Such figure must not only be considered meaningless for evaluation purposes, it may have been fraudulent to have presented such

a computed figure in the Proxy Report. The worth of Informatics software, unquestionably the element of greatest value the company possesses, can in no way be related to balance sheet evaluations, inasmuch as all research and developments costs of such software must normally be fully written off as expenses within the annual period those costs were incurred -- in most cases leaving a zero book value for such software at the end of the 12 months period.

The real worth of software, to be sure, can be calculated only in terms of the revenue and net income it produces or can produce, in no sense relative to the value "on the books." Further, a software development and marketing company has other highly important values in intangibles which, again, are not subject to value-on-the-books computations. Such intangibles as the developed strength and effectiveness of the company's personnel in all phases of operation, and the developed character, soundness and durability of the company's relationships with customers (all of which are possessed to an extraordinarily high degree by Informatics, Inc.) normally carry a zero book value per share.

Confirming the unconscionably misleading nature of disclosing (in the Summary section) that, as of September 23, 1973, the book value per share of Informatics, Inc., was $3.51, it should be stated

that based on the company's balance sheet as of the same date, the computed book value of software and the other intangibles (described in the preceding paragraph) aggregated only nine cents per share.

In paragraph (f), the only reason stated for the merger being proposed is that the $7.00 price "provides an opportunity for the stockholders to obtain substantially more than could have been obtained by a stockholder from a sale in the market just prior to the announcement of the proposed mer merger." No valid business or corporate purpose is even suggested, none certainly justifying "freezing out" stockholders at such an arbitrarily set price and time -- forcing out stockholders who may have bought their stock at substantially higher prices or were interested in holding on to their stock for any reason. The transparency of management's recommendations to its stockholders might have sufficed for the submission of an unrestricted tender offer at $7.00 per share, but it is unconscionably unsuited for a merger agreement under Delaware law, particularly inasmuch as management's recommendations were in conflict of interest.

In paragraph (i) it is disclosed that Merrill, Lynch, Pierce, Fenner & Smith, Inc., owned of record on January 15, 1974, 445,847 shares of Informatics common stock, approximately 26.5% of the total

shares outstanding. Not disclosed is the number of shares beneficially owned by the firm and which it was entitled to vote; and whether the firm intended to vote the shares in which it had beneficial interest in favor of or against the merger. Plaintiff affirms that the statement in the Proxy Report, "Management believes that a substantial number of such shares are beneficially owned by customers of the firm," is misleading in that it conveys the impression to stockholders that most of the shares held in the name of Merrill, Lynch, Pierce, Fenner & Smith, Inc., were beneficially owned by customers of the firm, whereas it is probable that the reverse may be true. In any case, there was no legally acceptable reason why the precise number of shares held for the beneficial interest of customers was not disclosed, there being no doubt that some 26.5% (more than 10%) of the stock was of record in the name of Merrill, Lynch, Pierce, Fenner & Smith, Inc.

In fact, the faithfulness of the disclosure relative to the number of shares held in the name of Merrill, Lynch may beget question in view of the drastically contrary character of disclosure of the same subject matter in the Proxy Report for the Annual Meeting (held on July 26. 1973), "The only person owning of record or known to management

to own beneficially 10% or more of the Corporation's outstanding stock is Merrill, Lynch, Pierce, Fenner & Smith, Inc., which on June 7, 1973, owned of record 520,933 shares (34%) of the Corporation's outstanding stock." In that earlier Proxy Report, it was unequivocally stated that Nerrill Lynch owned beneficially more than 10% of the Corporation's outstanding stock; and there is likelihood that the reduction in the number of shares held in the name of Merrill Lynch in the interim period did not change the general position of the firm from owning beneficial interest in 10% or more of the company's outstanding stock.

Further, the ownership of such a large block of stock, especially in relationship to the requirement that only a simple majority of stock voting approval of the "merger" would result in "freezing out" stockholders who did not wish to sell, would make one question whether or not the Proxy Report covering the purported "merger" or any other report required of Merrill Lynch appropriately complied with the disclosure or other requirements covering arrangements "entered into for the purpose of changing or influencing the control of the issuer." (Securities and Exchange Act §13(d)1, et seq.) In any event, the stockholders were legally entitled to receive a great deal more, and more dependably meaningful, disclosure about Merrill Lynch's holdings, involvement

and intentions with respect to the "merger" than was provided in the Proxy Report. This would especially apply inasmuch as Merrill Lynch was the principal market maker in Informatics, Inc. stock, at least during some months of 1973, when holdings may possibly have been accumulated for what may have been collaboration to accomplish a stockholder "freeze-out."

In paragraph (m) it was disclosed, "Dean Witter & Co., Incorporated, has been retained by Informatics as financial adviser in connection with the proposed merger and has advised the Board of Directors that in its opinion the price of $7.00 per share to be paid is fair and reasonable to the stockholders of Informatics." Plaintiff believes most investors would consider such a statement misleading in that it implies that Dean Witter & Co., Inc., had made an in-depth appraisal of the stock (which would need to be based, of course, on the long range plans and projections of management) when, in fact, as was stated by the Chairman of the Special Stockholders' Meeting of February 27, 1974, (in answer to a question from the floor) Dean Witter had made no appraisal of the stock. Further, no appraisal of the stock was provided to the Board of Directors when the directors were advised by Dean Witter & Co., Inc., "The price of $7.00 per share to be paid is fair and reasonable" (as discovery under the

Freedom of Information Act later disclosed).

15. Plaintiff Linker attended the Special Stockholders' Meeting of Informatics, Inc., held at the Valley Hilton Hotel, Sherman Oaks, Los Angeles, California, on February 27, 1974, and, as soon as he could obtain recognition from the Chairman once the meeting was called to order, stated:

"My name is Kahlman Linker (of Princeton, N.J.). I hold power of attorney to represent the interests of Mrs. Ruth T. Linker (my wife), holder of 1,000 shares of Informatics, Inc. common stock. Thereby, I demand that this meeting be immediately adjourned and postponed until a new Proxy Report is prepared and distributed to stockholders on the basis that the proxy material presently existing does not properly comply with paragraph G of Section 4.3 (on Page 11) of the Merger Agreement, in relationship to the statement that

> the proxy material. . 'shall not contain any untrue statement of a material fact and shall not omit to state any material fact necessary to make the statements contained therein not false and misleading.'

"I am a retired investment service publisher with some 45 years of experience in the securities industry. I regard this so-called 'merger' as the most unconscionably conceived conspiracy I have ever witnessed between the management of two companies

(one a highly respected quasi-public institution) to force stockholders of a publicly held company to sell their stock at ridiculously low prices.

"It clearly appears to be a rape of stockholders' interests by a carefully preconceived plan beginning with 1969 when practically 50% of the presently outstanding capitalization of Informatics, Inc., was sold to the public at $25.50 per share (more than three times the price the Board of Directors indicates appears attractive for stockholder deposit today).

"I shall present my documented objections to the Securities and Exchange Commission in Washington tomorrow morning.

"Further, I shall soon thereafter institute a stockholders suit against management of Informatics, Inc., on the basis that they appear definitely to have been (for an extended period of time) operating in conflict of interest, utilizing interlocking Boards of Directors with Equimatics, Inc. (a wholly owned holding company subsidiary of The Equitable Life Assurance Society of the United States) and with the Informatics, Inc. Board of Directors being completely deficient of even one member of the Board of Directors who could serve and protect the enlightened interests of the stockholders who hold 93.6% of the common capitalization.

"I shall document my position fully in my meeting with the SEC and in my stockholders suit (in which I may not ask other stockholders to join).

"In the meantime, I repeat my demand that this meeting be adjourned and postponed."

The most plaintiff, Linker, could accomplish at that meeting, of course, was to make sure his demand (which was actively supported by two other stockholders in attendance), was entered in the Minutes. The Chairman expeditiously proceeded to have the votes counted and the "merger" declared approved by stockholders' vote. Interestingly enough, the tabulation by the tellers indicated that ownership of a total of 40.1% of the outstanding number of shares of the company either voted against or abstained from voting. Unquestionably, the "merger" would not have been approved had there not been false or misleading disclosure in the Proxy Report or had management released its disclosure within a time frame which would have allowed non-management stockholders effectively to organize opposition to the "merger" prior to the date of the special stockholders' meeting. To be sure, had Merrill, Lynch, Pierce, Fenner & Smith, Inc., not been enabled to vote its stock (which, of course, was an illegal act) the purported "merger" agreement could not have nearly approached receiving the required majority of the ballot.

16. Early the following morning, February 28, 1974, plaintiff, Linker, met briefly with Philip R. Farnsworth, Branch Chief of the Corporation Finance Division of the S.E.C., in the S.E.C.'s office in Washington, D.C., and explained his complaint. It was agreed that plaintiff would write Farnsworth a letter

specifying the false or misleading statements or omissions of disclosure of material facts within the Proxy Report. However, plaintiff left the meeting with the feeling that Farnsworth had little enthusiasm for becoming involved (which later proved to have been an accurate appraisal). Plaintiff thereupon determined, before relying more upon the S.E.C., to attempt to obtain affirmative action in New York, either through The Equitable or the Insurance Department of the State of New York.

17. Plaintiff, Linker, expended much time and effort to obtain a hearing from the executives of The Equitable who had been involved in the project. In each case, however, he was told there was no interest in meeting or talking with him on the subject. Plaintiff then initiated several meetings with Mr. Lawrence M. Hyman, Assistant Chief of Life Bureau, New York Insurance Department, and his associate. Both were most cooperative, and the approach promised productive potential up until the point that Mr. Hyman agreed to submit to The Equitable (for their answer) a list of questions about the "merger" transaction which plaintiff committed himself to embody within a letter he would write to Mr. Hyman. On March 19, 1974, plaintiff wrote and delivered the letter, to which were attached 37 questions he hoped The Equitable would attempt to answer. About ten days later, when Linker phoned Mr. Hyman, he was told that his letter with the questions had been delivered to The Equitable, but their response had been that they did n not intend to make any reply. Further, Mr. Hyman stated that, upon inquiry to the General Counsel of the New York Insurance Department, there was nothing the Department could to about the matter in

respect to his letter or any other similar request on the same subject matter.

Much later, plaintiff met with one of the directors of The Equitable Life Assurance Society of the United States, who happened to have been an acquaintance of his in his youth and asked him to phone V. Henry Smith, the then long-time Chairman of the Board of The Equitable, hopefully to arrange for a meeting with Mr. Smith, to which the Director agreed. When Linker phoned Smith's secretary, shortly thereafter, to arrange for the meeting, he was told that Mr. Smith had said, "No purpose would be served by meeting with him."

18. On April 23, 1974, plaintiff, Linker, delivered to Philip R. Farnsworth of the S.E.C. a letter which provided specific references to false or misleading statements of material facts or omissions of statements of material facts in the Proxy Report for the "merger." In addition, the letter also carried an analysis of the votes which were tallied at that Special Meeting of Stockholders, as well as a copy of a letter from another dissident stockholder of Informatics (who had expressed his opposition to the "merger" at the meeting). A copy of plaintiff's letter of April 23, 1974, with attachments, is appended (as Exhibit A).

On April 29, 1974, plaintiff, Linker, wrote Farnsworth again, suggesting that the S.E.C. may have been unwittingly "taken in" by the management of Informatics, Inc., and The Equitable when reviewing the disclosure presented in the Proxy Report.

On May 17, 1974, in response to Linker's letters, Farnsworth wrote the letter presented on the next succeeding page (page 26A). It will be observed that Linker was thanked for "bringing

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

MAY 17 1974

Mr. Kahlman Linker
Data Digests, Inc.
67 Broad Street
New York, N.Y. 10004

Re: Informatics, Inc.
File No. 0-3924

Dear Mr. Linker:

This is in reference to your letters of April 23 and April 29, 1974 concerning the proxy material used in connection with the acquisition of Informatics by Equimatics, Inc.

The matters you have raised are of important concern to this agency. The cooperation of the investing public in bringing such matters to our attention is essential to the performance of our responsibilities under the federal securities laws. You can be assured that we are considering the points you have raised in light of those responsibilities. However, in the interest of effective enforcement and the protection of innocent parties and companies, the Commission's rules provide that its investigations be conducted privately. Thus, we are not at liberty to disclose whether an investigation is presently being conducted or may be undertaken in the future. In addition, as you are undoubtedly aware, the federal securities laws provide private remedies to investors who believe they have been aggrieved. You may wish to consider whatever private rights you may have.

Again, we thank you for bringing these matters to our attention.

Sincerely,

Philip R. Farnsworth
Branch Chief

these matters to our attention," and was informed, "you can be assured we are considering the points you have raised in the light of (the Agency's) responsibilities (under the Securities Laws)," although, "The Commission's rules provide that its investigations are conducted privately," inasmuch as, "we are not at liberty to disclose whether an investigation is presently being conducted or may be conducted in the future."

Farnsworth's letter to plaintiff of May 17, 1974, was unquestionably a capriciously written document, as will be enlarged upon later. No one at that time possessed more complete knowledge of the character and completeness of disclosure on the instant subject than did he, inasmuch as (discovery, under the Freedom of Information Act, later disclosed) he and the Corporation Finance Division of the S.E.C., of which he was Branch Chief, had been the Agency which reviewed the Preliminary Proxy Report which resulted in the form and content of the definitive Proxy Report. If investigations were to be conducted, he had to have known he would only be investigating his own actions or omissions of actions, for which he alone was responsible. His letter of May 17, 1974, therefore, must have been willfully misleading, as later discovery will confirm.

On at least four or five occasions thereafter Linker attempted by phone to arrange meetings with Farnsworth, only to be told each time by his secretary that he was either "away from his desk" or "in a meeting," and Farnsworth never returned the call, if a phone reply was requested.

On January 22, 1975, Linker phoned Farnsworth's office from the ground floor reception room of the building, requesting a

meeting with him that day, and was told that Farnsworth was not in the office. Linker then left a hand-printed message with Farnsworth's secretary to the effect that an attorney had asked Linker, "Have you thought of also suing the S.E.C.?" and that, at long last, Linker had determined to do that. (On the next succeeding pages, pages 28 A and B, is a copy of Farnsworth's letter of February 5, 1975, to Lawrence E. Nerheim, General Counsel of the S.E.C., which letter was obtained on or about May 28, 1975, by discovery under Freedom of Information Act procedures, and was doubtlessly written as a result of the incident described in this paragraph.)

On May 16, 1975, plaintiff wrote the S.E.C. requesting access, under the Freedom of Information Act (5 U.S.C. 552) to all documents in the files of the S.E.C.'s Division of Corporation Finance concerning complaints plaintiff had made in person to Philip R. Farnsworth on February 28, 1974, and by letter on April 23 and 29, 1974. The S.E.C.'s first response on May 28, 1975, made available to plaintiff access only to Linker's letters to Farnsworth above, plus Farnsworth's letter to Linker of May 17, 1974, and Farnsworth's letter to the S.E.C.'s General Counsel of February 5, 1975 (both also cited above).

From that point on, until October 30, 1975, plaintiff was unable to obtain an additional document, which may have been in the S.E.C.'s files relating to plaintiff's February 28, 1974, complaint to Farnsworth, or the assurance from the S.E.C. that the documents which had been provided were the only ones in the files. After repeatedly stating prior to October 30, 1975, that the files containing the preliminary proxy materials filed with the S.E.C. had

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February 5, 1975

Lawrence E. Herheim, General Counsel

Philip R. Farnsworth, Branch Chief
Lee C. Jones, Financial Analyst
Division of Corporation Finance

Possible legal action against the Commission arising out of the staff's review of a merger proxy statement involving Informatics, Inc.

On December 20, 1973 Informatics, Inc. filed preliminary proxy materials with the Commission relating to the proposed merger of Informatics with and into Equimatics, Inc., a wholly-owned subsidiary of a wholly-owned subsidiary of Equitable Life Assurance Society of America. These materials were reviewed by the branch and the letter of comments was released to Informatics, Inc. on January 16, 1974. On January 24, 1974 response was received to the letter of comments. On February 1, 1974 definitive copies of the proxy materials were filed with the Commission. The special meeting was held on February 27, 1974 at which time the proposed merger was approved by the shareholders of Informatics, Inc.

On February 28, 1974, at the request of Mr. Kahlman Linker, a conference was held in my office at which time Mr. Linker registered his complaint about the merger, alleging that a conspiracy existed between the parties to the merger and that the proxy statement was false and misleading. I suggested that Mr. Linker reduce his complaint to writing, specifying the material either stated in the proxy statement or omitted therefrom which made the proxy statement false and misleading.

On April 23, 1974 Mr. Linker furnished such letter wherein he set forth a list of various allegations concerning the management of the respective companies and purported omissions from the proxy statement which he alleged tended to make the proxy statement false and misleading. On April 29, 1974 Mr. Linker again wrote to me, adding to his previous list of allegations. On May 17, 1974 I responded to Mr. Linker's letters, refraining from disclosing to him whether any action by the Commission was being contemplated or planned against the parties involved.

On January 22, 1975 Mr. Linker again appeared for an unscheduled appointment, at which time I was unable to meet with him, whereupon he left the attached note. In such note he states that he may bring action against the Commission for unspecified reesons.

The dockets containing the definitive proxy statement and all correspondence in this matter are being held in my office. If your staff wishes to review them, please contact me at 51728 or Lee C. Jones at 51726.

Attachment:

been "lost" -- even though Farnsworth's letter of February 5, 1975, to Lawrence E. Nerheim, the S.E.C.'s General Counsel, had stated, "The dockets containing the definitive proxy statement and all correspondence in this matter are being held in my office," (see page 28B) -- the S.E.C. finally affirmed in a letter to plaintiff's counsel that two items requested by plaintiff "had been located." Copies of the pages of those items, incorporated as exhibits on the next succeeding pages (as pages 29A, B, C, D, E, F and G) provide evidence of what may have been capriciousness on the part of the managements of Informatics and The Equitable, Merrill, Lynch, Pierce, Fenner & Smith, Inc., Dean Witter & Co., Inc., and, importantly, the S.E.C.'s Division of Corporation Finance with respect to false or misleading disclosure in the Proxy Report for the Special Meeting of Stockholders held on February 27, 1974.

Plaintiff has not yet been able to obtain a preliminary copy of the Proxy Report (of which it may be observed, in the first sentence of the letter on page 29A, five copies had been sent to the S.E.C.) as well as other meaningfully informative documents, but those shown on the next succeeding pages have substantial significance in providing evidence of capricious disclosure. There should, of course, be little problem obtaining the preliminary copy of the Proxy Report, as well as the other documents which may have been withheld, once the proceedings of the instant cause of action have been started; and they must contain damaging evidence, so deep has been the S.E.C.'s interest in withholding them.

Plaintiff, at this time, prefers to reserve comment on the disclosure supplied in the letters from Edmund A. Hamburger under

D 36

0-3924-3

LAW OFFICES
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NORMAN JENSEN

A. B. SILBERBERG
1900-1960

GUY KNUPP
1907-1970

December 19, 1973

IN REPLY PLEASE REFER TO:
665-167

FEE RECEIVED
12/24/73
DEC 1973
OFFICE OF
REGISTRATIONS & DEBTS

Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, D.C. 20549

Re: Informatics, Inc.
Acquisition by Equimatics, Inc.

Dear Sirs:

I am enclosing herewith five preliminary copies of the Proxy Statement and form of Proxy to be sent to the stockholders of Informatics, Inc., in connection with the solicitation of proxies from them to be used at a special meeting of stockholders to consider and act upon the proposed acquisition of Informatics, Inc., by Equimatics, Inc., as described in the enclosed preliminary Proxy Statement.

The enclosed proxy material relates to a subject matter which is entirely different from and not referred to in the Proxy Statement dated June 22, 1973, of Informatics which was sent to its stockholders in connection with its most recent annual meeting. Accordingly, the material is not merely an updating of a prior year's material. In that connection, insofar as it includes material relating to compensation of officers and directors, there is not any change in the material for the fiscal year ended March 31, 1973.

Informatics is desirous of holding its stockholders' meeting as soon as possible and is hopeful of being able to set a record date this month and mail shortly after

the beginning of the year. Expeditious review of the enclosed material will be greatly appreciated.

I am enclosing herewith a check of this firm drawn to your order in the amount of $1,000 in payment of the appropriate filing fee.

If there are any questions you have, will you please call me on the telephone, collect.

Very truly yours,

Edmund A. Hamburger
of
MITCHELL, SILBERBERG & KNUPP

EAH:jh

Enc.

JAN 16 1974

Edmund A. Hamberger
Mitchell, Silberberg & Knupp
1800 Century Park East
Los Angeles, California 90067

Re: Informatics, Inc.
File No. 0-3924

Dear Mr. Hamburger:

We have these comments on the preliminary merger proxy soliciting material filed by Informatics, Inc. on December 20, 1973. All information in the proxy statement should be presented as of the latest practicable date.

Proxy Statement

Proxy Statement - page 1

It is requested that this section be followed immediately by another section entitled "Summary of Proposed Merger" or the equivalent which states that if the proposed merger is effected, present Informatics shareholders will receive $7.00 per share for their Informatics stock, and will not receive securities of any of the merger corporations or continue to be shareholders of Informatics. The book value of a share of Informatics stock should be set out with a reference to the book value entry in the income statement. It should also be indicated that the book value does not include the proportionate interest per share in potential assets which are carried on the books at no value. Appropriate references to the related notes requested in the financial statements should be included.

Purposes of the Meeting - page 1

The reasons for the proposed merger should be stated. See Item 14(a). The staff should be informed supplementally of the reasons, if any, for the decision to submit the merger to a shareholder vote instead of effecting it after a cash tender offer. The basis for the recommendation of Informatics' management should be stated. A copy of the Dean Witter appraisal should be furnished as supplemental information.

NOTE: EMPHASIS SUPPLIED BY PLAINTIFF

Voting - pages 1&2

It is suggested that the last sentence indicate whether or not the Merrill Lynch holding is beneficial.

Competition - page 18

Please advise the staff supplementally whether the company has considered the possibility of an anti-competitive suit or claim against IBM and whether the company has received any opinion of counsel about any such potential suit or cause of action.

Legal Proceedings - page 27

As supplemental information, please furnish the staff with a copy of the Transport Life Insurance Company complaint and current information about the status of the litigation.

Financial Statements

Reference is made to the caption "Loss or discontinued operations..." on page 7 and the related discussion in the fifth paragraph on Note A on page 8. Such items indicate that the loss is before corporate allocations. Note E on page 9 states that expenses related to discontinued operations are excluded. It should be disclosed wherein such expenses are included. Please revise as appropriate.

On page 7, the caption "Book value per common share" should be referenced to a note that briefly states how the book value was determined. Also the new note should be referenced to another new note as requested in the following comment.

Reference is made to registrant's interests in Atar CSI common stock (Note I, page 10) and class B stock of Equimatics. A caption disclosing that the registrant has investments which have no carrying value should be included under other assets on page F-4. The new caption should be referenced to a note briefly explaining such investments. Please revise.

Atleast one copy of the accountants' reports should be manually signed.

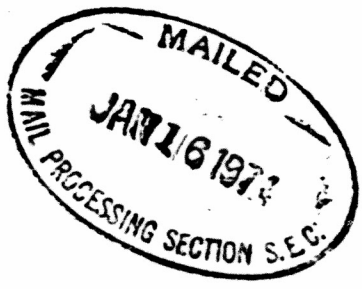
General

Any questions about comments on the financial statements may be directed to Mr. Jerome Schwartz, accountant (202-755-1741) and any others to Norman Schou, attorney (202-755-1739).

Sincerely,

Philip R. Farnsworth
Branch Chief

Farnsworth Br. #9
N. Schou/J. Schwartz/rm



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LAW OFFICES
MITCHELL, SILBERBERG & KNUPP
1800 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067
(213) 553-5000

January 24, 1974

IN REPLY PLEASE REFER T

665-167-6

Norman Schou, Esq.
Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, D.C. 20549

Re: Informatics, Inc.

Dear Mr. Schou:

I am enclosing herewith five copies of a proof of the definitive Proxy Statement which Informatics proposes to mail to its stockholders in connection with the acquisition of Informatics by Equimatics. I do not believe that there will be any substantial changes made but, if there are, I shall discuss them with you first.

I am enclosing herewith a copy of the opinion dated January 15, 1974, of Dean Witter & Co. Incorporated which discusses the fairness and reasonableness of the price of $7.00 per share to be paid to Informatics' stockholders. As far as Informatics and we are concerned, the reason that the merger is being submitted for a stockholder vote rather than effectuating it after a cash tender offer is that The Equitable did not wish to make a cash tender offer and does not wish to have minority stockholders when The Equitable itself does not have any stockholders and Equimatics is not a publicly held company. Furthermore, The Equitable insisted that the transaction take the form described in the Proxy Statement.

SOPH-
ISTRY

As I advised you on the telephone, Merrill, Lynch will not inform us as to how much of its holding is for its own account and how much is for the account of customers.

NOTE: EMPHASIS SUPPLIED BY PLAINTIFF

Informatics has not considered any suit or claim against IBM under laws regulating competition. Furthermore, it has not received any opinion of counsel with respect to such suit or claim.

I am enclosing herewith a copy of the Complaint filed by Transport Life Insurance Company in the United States District Court. The action is expected to be settled as described in the Proxy Statement.

I believe that the changes made in the financial statements meet the comments made in your letter. If there are any other comments or questions you may have, please call me as quickly as possible.

Sincerely yours,

Edmund A. Hamburger
of
MITCHELL, SILBERBERG & KNUPP

EAH:jh

Encs.

dates of December 19, 1973, and January 24, 1974, as well as in Philip R. Farnsworth's letter, under date of January 16, 1974 (reviewing the preliminary Proxy Report). It will aid the Court if plaintiff's comments are withheld until all the documents in the file of the S.E.C.'s Corporation Finance Division on the subject are in hand.

At this time plaintiff has chosen only to underline the subject matter in those letters on which comment is reserved until later in the proceedings, except in one instance -- that relating to counsel Hamburger's reply (in his letter to Norman Schou, dated January 24, 1974) in respect to The Equitable's "reason that the merger is being submitted for a stockholder vote rather than effectuating it after a cash tender offer."

The reasons given by counsel Hamburger, as attributed to The Equitable, are misleading, arbitrary, capricious, and not according to law. The Equitable's new company (after the "merger"), to be sure, does have minority stockholders -- such as Messrs. Bauer, et al., though they probably hold less than the maximum 5% permitted by law. More importantly, The Equitable had minority stockholders in its majority-controlled Equimatics, Inc., prior to the "merger" (in Informatics' substantial minority holdings of 50,000 shares of "B" stock).

Under the amended Insurance Law of the State of New York, if only a simple majority of the stock of Informatics, Inc., had been acquired, such acquisition would have complied with Section 46-a(2a) which states:

". . with respect to any one subsidiary in each chain

of ownership from the domestic insurer parent, ownership by the immediate parent of not less than a majority of the issued and outstanding voting stock shall be permitted."

At all times since December, 1971, The Equitable Life Holding Corporation held majority control of the voting stock of Equimatics, Inc., with Informatics, Inc., holding a substantial minority interest. There was nothing in the law which would have prevented The Equitable effectively to merge Equimatics with Informatics, and allow stockholders of Informatics (who so desired) to stay aboard the merged company, as long as The Equitable held not less than a majority of the outstanding voting stock.

Instead, The Equitable -- a "public trust" company, whose directors have high fiduciary responsibility to the public interests--willfully "froze out" all the non-management stockholders of Informatics (in almost all instances, individuals of small or moderate means), forcing them by what may be called an "artifice to defraud," to sell all of their stock to The Equitable at but a small fraction of its true worth. In addition, The Equitable may have accomplished this by what many would call "bribery bait" to Informatics' management to compensate them for breaching their fiduciary responsibilities to stockholders.

19. On or about April 15, 1974, plaintiff, Linker, met with defendant Bauer in Los Angeles to determine whether there was the slightest chance that the true interests of Informatics' non-management stockholders could be salvaged. Within a very few minutes Linker concluded that such benign purpose most certainly would not result from any action Bauer might attempt.

Bauer indicated, in answer to plaintiff's question, that the "merger," as effectuated, had been planned "on a relaxed basis, for some months." He told plaintiff, too, that "some very big law firms were involved" (which plaintiff presumed to mean that anyone such as plaintiff was just wasting his time and money in attempting to litigate).

On August 13, 1974, plaintiff, Linker, wrote Walter F. Bauer requesting a complete official tally of the voting (for, against and abstaining) the "merger" at the Special Stockholders' Meeting on February 27, 1974, and the names of the official tellers and the organization with which they were affiliated.

Under date of September 25, 1974, after a follow-up request, Bauer reported tally figures that were different from those verbally reported by the tellers at the stockholders' meeting.

What was much more disturbing to plaintiff was that Bauer indicated in his letter, "The votes were counted by Mrs. Merrilyn Partington, Secretary of the Company, and Mrs. Suzanne Lakavage, my secretary." Plaintiff had been informed that Bank of America, Los Angeles, had been originally designated as official tellers.

Plaintiffs believe that all "frozen-out" stockholders are entitled to know why, in matters of such importance, and involving such potential conflict of interest, the management of Informatics, Inc., did not designate and use independent tellers?

Why were management-related tellers used, unless to cover up, if needed, illegal or unfair practices of management and/or collaborators?

Would not people who use such devices in all likelihood

be of a kind who would solicit and/or accept "bribes" to breach their fiduciary responsibilities to stockholders?

20. Petitioners respectfully pray this Court for an urgent preference on the trial calendar. Each day many thousands of dollars of stockholders' money are being lost to them by diversion of proceeds from operations of the company, the stock of which they were capriciously, illegally and unfairly forced to sell to a subsidiary of defendant, Equitable Life Holding Corporation.

WHEREFORE, plaintiffs pray this Court:

A. To grant this matter the expedited treatment on the Court's docket provided by the Expedited Preference requested;

B. Order the "merger" purported to have been declared effective as of February 28, 1974, vacated and of no effect; and the corporate status in all details existing between Informatics, Inc., and Equimatics, Inc., prior thereto to be restored;

C. Order Walter F. Bauer, Werner L. Frank, Francis V. Wagner, and all other executive officers and directors to resign, and their ownership of stock, options, management contracts, participation in employee stock purchase plans, deferred compensation arrangements and all other fringe benefits, etc., in the presently "merged" company cancelled and of no effect, together with assessment of appropriate damages to the Company which will at least cover the incentive and fringe benefits cited above paid to them by the "old" company since their first day of employment;

D. Order J. Henry Smith and the directors of The Equitable Life Assurance Society of the United States to pay appropriate

damages, such to be payable to Informatics, Inc.

E. Order Merrill, Lynch, Pierce, Fenner & Smith, Inc., to pay to Informatics, Inc., all profits received from purchases and sales of the stock of the company in violation of the Securities & Exchange Act, §16(b); and order Merrill, Lynch, Pierce, Fenner & Smith, Inc., to pay appropriate damages to Dynamismm for violations of the Securities & Exchange Act §13(d)(1) et seq., and order Merrill, Lynch, Pierce, Fenner & Smith, Inc., Dean Witter & Co., Inc., and Goldman, Sachs & Co. to pay appropriate damages to Dynamismm for violations of other laws, especially those involved in breach of faith conduct, and "bribery."

F. Award plaintiffs reasonable attorneys' fees and costs of investigating and obtaining evidence, such costs to be assessed against the Equitable Life Holding Corporation;

G. Grant such other and further relief as the Court may deem just and proper.

Actions by plaintiffs are pending in the U.S. Circuit Court of Appeals for the Second Circuit of New York (#76-4163), and in the U.S. District Court for the District of Columbia (CA76-0057).

KAHLMAN LINKER
Plaintiff, Pro Se
67 Broad Street
New York, New York 10004
(212) 425-3620

D 48

DATA DIGESTS, Inc., 67 Broad Street, New York, N. Y. 10004 212-425-3620

April 23, 1974

Securities & Exchange Commission
Corporation Finance Division
Washington, D. C.
Attention: Mr. Philip Farnsworth

Dear Mr. Farnsworth:

You will recall that on the morning of February 28, 1974, I appeared in your office and called to your attention the fact that I believed the non-management stockholders of INFORMATICS, Inc. had been illegally and unjustly forced to sell their stock and at ridiculously low prices by a conspiracy between the managements of Informatics, Inc. and The Equitable Life Assurance Society of the United States.

The following is a transcript of the statement I made at the early part of the Special Stockholders Meeting, held in Los Angeles, California on February 27, 1974, and which I read to [illegible] in your office on February 28, 1974:

> "My name is Kahlman Linker (of Princeton, N.J.). I hold power of attorney to represent the interests of Mrs. Ruth T. Linker (my wife), holder of 1,000 shares of Informatics, Inc. Common stock. Thereby, I demand that this meeting be immediately adjourned and postponed until a new Proxy Report is prepared and distributed to stockholders on the basis that the proxy material presently existing does not properly comply with Paragraph G of Section 4.3 (on Page 11) of the Merger Agreement in relationship to the statement that
>
> > the proxy material... "shall not contain any untrue statement of a material fact and shall not omit to state any material fact necessary to make the statements contained therein not false and misleading."
>
> I am a retired investment service publisher with some 45 years of experience in the securities industry. I regard this so-called "Merger" as the most unconscionably conceived conspiracy I have ever witnessed between the managements of two companies (one a highly respected quasi-public institution) to force stockholders of a publicly-held company to sell their stock at ridiculously low prices.

EXHIBIT 13 - 17 PAGES

It clearly appears to be a rape of stockholders' interests by a carefully preconceived plan beginning with 1969 when practically 50% of the presently outstanding common capitalization of Informatics, Inc. was sold to the public at $25.50 per share (more than 3 times the price the Board of Directors indicates appears attractive for stockholder deposit today).

I shall present my documented objections to the Securities & Exchange Commission in Washington tomorrow morning.

Further, I shall soon thereafter institute a Stockholders Suit against management of Informatics, Inc. on the basis that they appear definitely to have been (for an extended period of time) operating in conflict of interest, utilizing interlocking boards of directors with Equimatics, Inc. (a wholly owned holding company subsidiary of The Equitable Life Assurance Society of the United States), and with the Informatics, Inc. Board of Directors being completely deficient of even one member of the Board of Directors who could serve and protect the enlightened interests of the stockholders who held 93.6% of the common capitalization.

I shall document my position fully in my meeting with the SEC and in my Stockholders Suit (in which I may not ask other stockholders to join).

In the meantime, I repeat my demand that this meeting be adjourned and posponed."

You suggested that I write you a letter making specific reference to material either stated in the Proxy Report or omitted from inclusion in the Proxy Report which tend to make the statements contained therein false and misleading. On the attached pages I have detailed 20 such specifications (Exhibit A).

Further, I felt you might find of substantial significance an analysis of the votes which were tallied at the Special Stockholders' meeting. They, too, are attached (Exhibit B).

In addition, I have attached a copy of a letter dated February 27, 1974 from Mr. Malcolm H. Levin, a dissident stockholder who expressed himself at the meeting (Exhibit C).

As one who has had 45 years of experience in the securities industry 41 of which has been spent in publishing investment services, I have never witnessed a greater rape of stockholders' interest <u>through</u>

corruption of the disclosure requirements of the SEC by corporate managements.

I trust you will proceed promptly and effectively to redress this injustice.

Very truly yours,

Kahlman Linker

KL/cj
Encls.

1. Isn't the use of the word "Merger" itself deliberately false and misleading, and intended to confuse many stockholders?

   Isn't it plain to see that all Informatics non-management stockholders are completely excluded from participation of any kind in the surving merger company?

2. Why then did not Informatics' management have the responsibility to state clearly and precisely from the very outset that, "as far as you non-management stockholders are concerned, this 'Merger' has no functional meaning. For you this is only a 'Tender Offer' of an unusually drastic kind -- one in which you are forced to sell all your stockholdings at the arbitrarily offered price, if a simple majority of non-management held stock is voted in favor of accepting the tender offer at the price arbitrarily set. In the latter eventuality, you may not refuse to give up your stock; you only have the right to protest to a Court and get your stock appraised by a court-appointed appraiser, and at your expense."

3. Could there have been a more unconscionably irresponsible, if not capricious act than that of forcing all stockholders of a company to sell their stock for the sole reason that "the price of $7 per share for such stock which stockholders will receive if the Merger becomes effective appears attractive and provides an opportunity for the stockholders to obtain substantially more than could have been obtained by a stockholder in the market just prior to the announcement of the proposed merger?"

4. Why wasn't Dean Witter & Co. asked to make a full fledged, in-depth appraisal of the value of the stock (which the Chairman of the Special Stockholders' meeting, in response to my questioning admitted was not done. Couldn't anybody who could read have advised the Informatics' Board of Directors that "the $7 price was higher than the price the stock had been selling for in the market just prior to the announcement of the proposed 'Merger?' "

5. Did not the management of Informatics have the responsibility to state much more in the Proxy material than that "the price offered is in excess of the highest bid price of Informatics common stock quoted in the over-the-counter market during the preceding twelve months, although during earlier periods Informatics common stock had been quoted in such market at per share prices higher than $7?"

   Should not they have also had the responsibility for stating that the stock had sold as high as 14 7/8 in 1971, 21 1/2 in 1970, 30 1/4 in 1969, 36 in 1968 and 28 1/4 in 1967?

   Should not they have also had the responsibility to state that original offerings of the stock had been sold to the public at a price (adjusted for a 2 for 1 split) of $32.50 per share in 1968 and $25.50 per share in 1969, with the company obviously a far stronger, sounder, more profitable organization today than it was at the time those public offerings were made?

NOTE: Before spelling out my second set of questions, it is desirable first to present a tabulated analysis of the voting figures (which is based on my understanding of the tally as it was verbally transmitted to me at the Special Meeting, on February 27, 1974).

With respect to the following tabulations, perhaps the most meaningful conclusion is that

- only 53.5% of the shares entitled to vote and be counted (those held by stockholders other than officers and directors) were actually voted in favor of the "Merger."

6. Thus, were not all stockholders, in effect, forced to sell their stock to Equitable (and on Equitable's arbitrarily-set terms) by a very small percentage over the bare majority required under Delaware law?

7. However small the small percentage which "won the day" for Informatics management, did not the 3.5% majority (voting in favor of the "Merger") indubitably include the votes of:

(A) Non-top-management stockholding employees of Informatics "who would be found dead" as far as continued employment with Informatics is concerned if they had not voted in favor of the "Merger?"

(B) Unsophisticated investors who did not read the Proxy Agreement (or any Proxy Agreements, ever), and/or who did not understand or were incapable of understanding the true implications of this unconventional proposed "Merger", and/or who may be of the credulous class of stockholders who always send in proxies marked "in favor of" management's recommendation or without designation "for" or "against" (which latter were, of course, automatically tallied as votes "in favor of" the "Merger?"

(C) Stockholders holding stock in "street name" who did not send in signed proxies to their brokers, the latter of whom then (as is conventional) exercised the privilege of voting the stock for the stockholder "in favor of" the "Merger?"

8. Thus, isn't it clear that the "Merger" would not have had the slighest chance of accomplishment (despite statements of material fact in, or omissions of statements of material fact omitted from the Proxy Statement which, at least, tend to be false and misleading)

If Equimatics had been incorporated in New York State (as is its "Grand-daddy") and Informatics incorporated in California, as it was before the "conspiracy" was first implemented?

9. Isn't there also great likelihood, that it would not have been accomplished even under Delaware law

> if the will of a simple majority of stockholders had been allowed or encouraged to express itself freely and intelligently in their own enlightened interests, and had not been presented with a proposal that in material ways, at least, tended to be both false and misleading?

10. Isn't it also quite significant to observe that

> more non-management shareholdings were voted AGAINST the "Merger" than the number of shares held by Officers and Directors voting FOR the "Merger?"
>
> Non-Management-Held Shares-AGAINST 124,600
>
> Shares Held by Officers & Directors-FOR - 108,705

11. Isn't it also quite interesting to observe that an inordinately large number of shares (548,718 shares), or 35% of the total of 1,573,828 non-management-held shares, did not vote either FOR or AGAINST the "Merger?" Doesn't this also mean that Less Than Two-Thirds of the shares held (whose votes counted) actually voted FOR or AGAINST the "Merger", a shockingly small showing, in view of the fact that shareholder future participation in the Company was actually at stake?

The tabulation of the statistics of voting follow:

Total Shares Outstanding of Record		1,682,533	100%
Non-Management-Held Shares	FOR	900,510	53.5%
Management-Held Shs. (not counting). .	FOR	108,705	6.4%
Non-Management-Held Shares	AGAINST	124,600	7.5%
Non-Management-Held Shares . . .	NOT VOTING	548,718	32.6%
(Above includes Proxies received)	ABSTAINING		0.1%

12. How much chance do you believe there would have been to obtain required approval of the "Merger" by Informatics stockholders if Informatics were today incorporated in California and Equimatics were incorporated in New York (as is The Equitable)?

> Better Chance? _____
> Equal Chance? _____
> Less Chance? _____
> No Chance? _____
>
> We could not have even tried to consummate a "Merger" by such method? _____

13. What is your educated guess as to the percentages of shares which were, in effect, voted IN FAVOR of the "Merger" and were represented by the following:

(A) Credulous or unsophisticated investors who normally send in their proxies in conformity with Management's recommendations (with or without specification of their assent on the Proxy)?

_____% of Shares Outstanding

(B) Proxies on stock held in "street name" voted in favor. of the Plan by brokers (their customers not having returned signed Proxies to them?

_____% of Shares Outstanding

(C) Stockholders (or speculatores) or management-follower friends of the merging companies) who had bought the stock below $7 per share and saw easy, sure, fast and substantial profitability from depositing ther stock under the "Merger" Proposal?

_____% of Shares Outstanding

(D) Stockholders who saw they were given no realistic alternative by the Plan except one of highly questionable usefulness to them (such as dissenting, then applying for and obtaining an expensive appraisal from a Court-appointed appraisal, the cost and burdensome effort of which would be most unjustified in terms of the probable size of their investment in Informatics)?

_____% of Shares Outstanding

14. Aren't your answers to the above particularly damning to The Equitable and to the management of Informatics in that there is clear evidence that each conspired with the other to seek the "appropriateness" (Equitable's Mr. Ralph S. Irwin's reason, in answer to my question for incorporating ELHC and Equimatics under Delaware law) of incorporating under Delaware law. Wouldn't any fair-minded individual thus consider that prestigious Equitable was, in effect, caught trying to "steal" from small stockholders (some of whom are undoubtedly their policyholders)?

15. Don't you believe that the management of Informatics had the responsibility to state in the Proxy material in clear, and precise terms completely understandable by all stockholders the facts that it had, at least since May, 1969 (when on shallow pretext, the Company changed the state in which it was incorporated from California to Delaware), it had apparently been planning at an appropriate time in the future to force non-management stockholders, in effect, to sell their stock to management or to management's designate on any terms management could apparently justify, however much non-management stockholders were unwilling to let go of their stock for the short-term or long-term?

16. Don't you believe that The Equitable had the responsibility to state in the Proxy material in clear, precise terms completely understandable by all Informatics stockholders the facts that it was subject to the laws of the State of New York while Equimatics was subject to the laws of the State of Delaware -- a contrived policy on the part of the management of The Equitable to enable it to conspire with the management of Informatics in ways that would force non-management stockholders of Informatics to sell their stock at ridiculously low prices, even though many stockholders might be unwilling to sell at all?

17. Don't you believe that the managements of both Informatics and Equimatics had the responsibility to state in the Proxy material in clear, precise, terms completely understandable by all stockholders of Informatics that since the formation of Equimatics in 1971, the Boards of both Informatics and Equimatics have been substantially, if not completely interlocking, and thus, much more meaningfully state that "prior to joing Equimatics in December 1971 (as President) Mr. Werner L. Frank was a Senior Vice President of Informatics?"

18. Don't you believe that the management of Informatics had the responsibility to state in the Proxy material, in clear, precise terms completely understandable by all its stockholders, that the Company's Board of Directors is completely controlled by management with there having been no director who could effectively represent the interests of non-management stockholders (the only "Public" director being Lester L. Kilpatrick, Chairman and President of California Computer Products, Inc., on whose Board the Chairman and President of Informatics has served for some few years)?

19. Among other important factors, on the basis of the interlocking Equimatics and Informatics Boards of Directors by management, weren't the non-management stockholders of Informatics entitled to statements in the Proxy material in clear, precise terms completely understandable to all Informatics stockholders that this so-called "Merger" proposal was, by no manner of means, negotiated "at arm's length", but was, in fact, a bald-faced conspiracy to force all non-management stockholders to sell all their stock in the Company to management or management's designate at prices substantially lower than its realistic worth, after stockholders had financed and assumed all risks encountered by management in starting, building up and developing the operations of the company where it was undoubtedly to become one of the most profitable and growingly profitable companies in the computer service field, as well as in the information processing and information communications field, garnering for itself and for its affiliate, Equimatics, for all time a huge and rapidly growning percentage of many important segments of the operations of those fields on both a national and international basis?

20. On the above basis, does not the Superintendent of Insurance of New York have the responsibility under Statue to examine the potential illegality and antitrust implications of this so-called (100%) "Merger?"

21. Does not the fact that, beginning with the completion of the "Merger" (made in the form of requiring forced acceptance of an arbitrarily-priced Tender Offer), with the sole reasons given for the "Merger" being patently inadequate insofar as non-management stockholders of Informatics are concerned, and with the certainty that information on the nature of and the volume of future revenues and profits of the merged companies will become a "closed book" to the public (such data thereafter becoming open only to the Insurance Superintendent's view) argue positively as to the potential antitrust implications of the "Merger", as well as impose on Informatic's management unusually high responsibility clearly to justify the adequacy of the $7 price on bases far more meaningful than that "the price appears attractive and provides an opportunity for the stockholders to obtain substantially more than could have been obtained by a stockholder from a sale in the market just prior to the accouncement of the proposed Merger?" With there being complete "blanket" over public disclosure of the nature, volume and profits from the merged company in the future, did not the managements of both Informatics and Equimatics have the clear responsibility to present in the Proxy material not only full, open and objectively reliable appraisals of the true intrinsic worth of Informatics' stock but both near-term and long-term projections of the nature of, volume of revenues and profits of both companies as they corporately existed before the completion of the "Merger" for progressive future periods, encompassing at least 10 years ahead?

22. Did not the management of Informatics have the responsibility to state in clear, precise terms completely understandable to all stockholders that the 1973 and 1974 market prices for Informatics stock and the stock of other software companies were adversely affected by a U.S. Supreme Court decision that software is not patentable even though (as was stated in the Proxy material on Page 11) the Company's "competitive position depends on its technical competence and the creative ability of its personnel and that its business is not materially dependent on copyright or patent protection?" And did not management of Informatics also have the responsibility to state in clear, precise terms completely understandable to all Informatics stockholders that at no time in the history of securities markets has there been more distortion as between most common stock prices and underlying values, particularly as has been applicable to the common stocks of young, emerging companies engaged in fields of important and sophisticated technological development (such as Informatics), whose common capitalizations have been relatively small, whose stocks are traded over-the-counter and which enjoy relatively narrow if not sparse information exposure or interest to either individual or institutic ' investors?

23. Did not the management of Informatics have the responsibility to state in clear, precise, fully emphasized terms completely understandable to all stockholders, that, while the 50,000 shares of Class B stock in Equimatics (held by Informatics) is carried on the company's books at zero, in the opinion of Equimatics' management, the operating losses of Equimatics are thoroughly temporary in that "this loss is principally due to start up and product development costs?" In fact, did not the management of Equimatics have the clear responsibility to state just

(23 cont'd) ...ow profitable it expected this important equity in Equimatics would be for Informatics in the near-term and long-term future, completely without respect to the two companies being merged?

24. In addition, did not the management of Informatics have the responsiblity (after showing the book value as being $3.51 per share as of September 29, 1973) to state in clear, precise terms, unmistakably understandable to all Informatics stockholders that a book value figure as stated (while itself clearly understated, as above) is also widely known to be an unmeaningful figure for evaluating software company stocks, the major values in assets of such software company stocks being almost completely intangible and not subject to evaluation intrinsically (and with the true value of the intangibles in this case normally being greatly in excess of the intrinsic values stated on the books)?

25. Isn't the statements in the Proxy material to the effect that Informatics' Board of Directors believes that the cash price negotiated with The Equitable is fair and reasonable and is in the best interest of Informatics stockholders tend either to be false and misleading or doesn't it impose a far greater responsibility on the part of the Board of Directors to document the truth of that statement than the fact that the stock was selling in the market prior to the accouncement of the merger offer lower than the $6 and $7 price offered by The Equitable?

26. Is it easy to reconcile the veracity of the statement that the price of $7 per share is fair and reasonable and "in the best interest of Informatics' stockholders," with the facts of a completely controlled Board of Directors of Informatics by management, interlocking Boards of Directors for both Informatics and Equimatics, coordination of activity to make sure of incorporation in Delaware by both corporations, sharing of a top Informatics executive with Equimatics, low-cost stock in Informatics sold to management in earlier years through direct sale or generous options, generous salaries and deferred compensation and profit participation arrangements to management combined with liberal downward adjustment of option exercise prices prior to the Merger offer, in addition to generous settlement for cancellation of unexercised option privileges, certain capital gains profits to management on their Informatics stock held directly prior to the Merger, generous long-term salary and deferred compensation contracts with the surviving company and a stock purchase arrangement for management in the surving company's B stock which probably is "sweeter" than that ever before offered "incoming" management by any American Corporation in history?

27. In the stock purchase arrangement latterly referred to in the question directly above, hasn't Informatics' management actually been guaranteed capital gains appreciation of A MINIMUM OF MORE THAN 178 TIMES ACTUAL COST on the B stock in the surviving company which has been reserved for its

various members within a three-year period -- without actual capital investment on their part being involved?

28. Wouldn't one having objectivity and knowledge of such conditions be given to believe that conflict of interest potential on the part of Informatics' and Equimatics' Officers and Directors, if not those of Equitable itself, merits deep inquiry by the Insurance Superintendent?

29. Does the tally of the votes at the Special Meeting indicate any overwhelming non-management stockholder belief that "the cash price negotiated with The Equitable is in the best interests of Informatics' Stockholders (i.e. non-management holders having 93.6% of the Common Stock)?" Or doesn't it clearly indicate, when corrected for the unfair techniques used "to get out the vote", directly the opposite?

30. Should not management of Informatics' management have had the responsibility clearly to state in the Proxy material what they must deeply have believed -- that communications-oriented software companies are just at the start of a strong movement into preempting for themselves a literally tremendous portion of the computer processing business, a movement which will garner for the more efficient of their small number literally tremendous profitability in the years ahead -- and that they will make these gains greatly at the expense of computer, main-frame manufacturers?

31. If there is any grain of truth in the above paragraph, couldn't this "rape" of Informatics' non-management stockholders by a conspiracy between Informatics management and that of The Equitable well have become "one of the greatest steals from stockholders attempted in corporate history?"

32. In any event, should not The Equitable be required to provide to the Insurance Superintendent its confidential estimates and projections of the nature, composition and volume of the surviving company's revenues and profits for at least 10 years ahead?

33. Who were the initial and/or continuing architects of this alleged "caper" which began taking form at least in 1969? Was it Richard E. Krafve and/or Thomas L. Taggart, Directors and "independent consultants" of Informatics at least since July 22, 1969? What actually has been their background, what kinds of "consultant" contributions have they provided to the management of Informatics, both in and out of Board of Directors' activities? If not they, or only they, who were also involved, at the "well-head" or pipe line?

34. While answering the above, could you also tell me why Lynn V. Jones resigned from his position as Vice-President and Secretary (as well as Director) on May 29, 1973.

35. How can Dr. Walter F. Bauer reconcile the glowing report of the company's progress (as indicated by the attached excerpts from Informatics 1973 Annual Report with his recommendation that it was in the stockholders' interest to sell his stock at $7 per share?

36. How can any objective person reconcile integrity in management with the holding up of the mailing of this Informatics' 9 months' report (which showed earnings per share in the 9 months ended 12/29/73 some 2 1/3 times the showing in the like period of 1972) until most stockholders had sent in their Proxy votes?

37. Isn't it interesting that these same figures were carried (in a most casual way, which was certain not to get the riveted attention of most stockholders) in the Proxy statement, so that the formal 9 months' interim report could easily have been sent out much earlier to stockholders as it was done in 1973 (our files show a stamped receipt date of February 12, 1973 for a press release of the 9 months' figures in 1973-attached)?

NOTE: I have some more questions to ask if the above do not seem to have sufficed.

EXHIBIT B

NOTE: It is desirable to present a tabulated analysis of the voting figures (which is based on my understanding of the tally as it was verbally transmitted to me at the Special Meeting, on February 27, 1974).

The tabulation of the statistics of voting follow:

Total Shares Outstanding of Record		1,682,533	100%
Non-Management-Held Shares	FOR	900,510	53.5%
Management-Held Shs. (not counting). .	FOR	108,705	6.4%
Non-Management-Held Shares	AGAINST	124,600	7.5%
Non-Management-Held Shares . . .	NOT VOTING	548,718	32.6%
(Above includes Proxies received)	ABSTAINING		0.1%

With respect to the following tabulation, perhaps the most meaningful conclusion is that

> only 53.5% of the shares entitled to vote and be counted (those held by stockholders other than officers and directors) were actually voted in favor of the "Merger."

1. Thus, were not all stockholders, in effect, forced to sell their stock to Equitable (and on Equitable's arbitrarily-set terms) by a very small percentage over the bare majority required under Delaware law?

2. However small the small percentage which "won the day" for Informatics management, did not the 3.5% majority (voting in favor of the "Merger") indubitably include the votes of:

   (A) Non-top-management stockholding employees of Informatics "who would be found dead" as far as continued employment with Informatics is concerned if they had not voted in favor of the "Merger?"

   (B) Unsophisticated investors who did not read the Proxy Agreement (or any Proxy Agreements, ever), and/or who did not understand or were incapable of understanding the true implications of this unconventionally proposed "Merger", and/or who may be of the credulous class of stockholders who always send in proxies marked "in favor of" management's recommendation or without indication as "for" or "against" (which latter were, of course, automatically tallied as votes "in favor of" the "Merger"

   (C) Stockholders holding stock in "street name" who did not send in signed proxies to their brokers, the latter of whom then (but is conventional) exercised the privilege of voting the stock for the stockholder "in favor of" the "Merger?"

3. Thus, isn't it clear that the "Merger" would not have had the slightest chance of accomplishment (despite statements of material fact in, or omissions of statements of material fact omitted from the Proxy Statement which, at least, tend to be false and misleading)

> if Equimatics had been incorporated in New York State (as is its "Grand-daddy") and Informatics incorporated in California, as it was before the "conspiracy" was first implemented?

4. Isn't there also great likelihood, that it would not have been accomplished even under Delaware law

> if the will of a simple majority of stockholders had been allowed or encouraged to express itself freely and intelligently in their own enlightened interests, and had not been presented with a proposal that in material ways, at least, tended to be both false and misleading?

5. Isn't it also quite significant to observe that

> more non-management shareholdings were voted AGAINST the "Merger" than the number of shares held by Officers and Directors voting FOR the "Merger?"
>
> Non-Management-Held Shares-AGAINST - 124,600
>
> Shares Held by Officers & Directors-FOR - 108,705

6. Isn't it also quite interesting to observe that an inordinately large number of shares (548,718 shares), or 35% of the total of 1,573,828 non-management-held shares, did not vote either FOR or AGAINST the "Merger?" Doesn't this also mean that Less Than Two-Thirds of the shares held (whose votes counted) actually voted FOR or AGAINST the "Merger", a shockingly small showing, in view of the fact that shareholder future participation in the Company was actually at stake?

7. How much chance can one believe there would have been to obtain required approval of the "Merger" by Informatics stockholders if Informatics were today incorporated in California and Equimatics were incorporated in New York (as is The Equitable)?

> Better Chance? _____
> Equal Chance? _____
> Less Chance? _____
> No Chance? _____
>
> We could not have even tried to consummate a "Merger" by such method? _____

8. What can one's educated guess be as to the percentages of shares which were, in effect, voted IN FAVOR of the "Merger" and were represented by the following:

(A) Credulous or unsophisticated investors who normally send in their proxies in conformity with Management's recommendations (with or without specification of their assent on the Proxy)?

_____% of Shares Outstanding

(B) Proxies on stock held in "street name" voted in favor of the Plan by brokers (their customers not having returned signed Proxies to them?

_____% of Shares Outstanding

(C) Stockholders (or speculators) or management-follower friends of the merging companies) who had bought the stock below $7 per share and saw easy, sure, fast and substantial profitability from depositing their stock under the "Merger" Proposal?

_____% of Shares Outstanding

(D) Stockholders who saw they were given no realistic alternative by the Plan except one of highly questionable usefulness to them (such as dissenting, then applying for and obtaining an expensive appraisal from a Court-appointed appraisal, the cost and burdensome effort of which would be most unjustified in terms of the probable size of their investment in Informatics)?

_____% of Shares Outstanding

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EXHIBIT C

MALCOLM H. LEVIN
PRIVATE INVESTIGATIONS
1609 WEST NINTH STREET
LOS ANGELES, CALIFORNIA 90015
(213) HOLLYWOOD 2-6394 (24 HOURS)

February 27, 1974

Mr. Kahlman Linker
67 Broad Street
N.Y., N.Y. 10004

Dear Mr. Linker:

It was a pleasure meeting you today, even though the circumstances were certainly less than pleasant. I agree with you that we witnessed a rape.

I and an associate, who is also a stockholder, John A. Altschul, 1609 W. 9th Street, Los Angeles, California, wish to go on record as agreeing with your proposal to bring this matter to the attention of the S.E.C. and the appropriate courts.

I regret that during the meeting I considered the question, but failed to ask it, of why the corporation need be sold at any price. It seems that everyone is in agreement that the company is the leader in its field and its present earnings are the highest in its history. These facts do not seem to agree with the philosophy of selling the company, especially at such a ridiculous price.

Both Mr. Altschul and myself would be willing to contribute the sum of $100.00 each to aid in the fight to get the apparent stockholder appro val reconsidered or vacated. Each of us feels certain that the other shareholders who feel the same as we do would also be willing to contribute money and effort at effecting this result.

After you get time to consider your alternatives I would like very much to hear from you. If there is

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anything that we can do to aid in this matter please contact me at the above number by calling me person to person and leaving you number. I shall call you back at the time of day you indicate is convenient.

Very sincerely,

MALCOLM H. LEVIN

MHL:sa